



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Marc Elias, Esq
Perkins & Cole, LLP
607 14th Street, NW, Suite 800
Washington, D C 20005

MAR 13 2008

RE MUR 5504
Karoly Law Offices, P C

Dear Mr Elias

Based on a complaint filed with the Federal Election Commission on August 3, 2004, and information supplied by your client, Karoly Law Offices, P C , the Commission, on June 21, 2005, found that there was reason to believe Karoly Law Offices, P C , knowingly and willfully violated 2 U S C §§ 441b(a) and 441f, and instituted an investigation of this matter

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that knowing and willful violations have occurred

The Commission may or may not approve the General Counsel's recommendation Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible) The General Counsel's brief and any brief that you may submit will be considered by the Commission before proceeding to a vote on whether there is probable cause to believe a violation has occurred

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days

You may also request an oral hearing before the Commission See Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed Reg 7551 (Feb 16, 2007) Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address

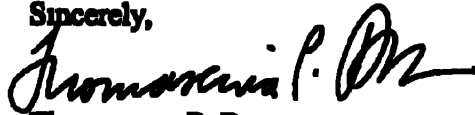
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Letter to Marc Elias
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A finding of probable cause to believe requires that the Office of the General Counsel ' attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement

Should you have any questions, please contact Delbert K. Rigby, the attorney assigned to this matter, at (202) 694-1650

Sincerely,

A handwritten signature in black ink, appearing to read "Thomasenia P. Duncan", with a stylized flourish at the end.

Thomasenia P. Duncan
General Counsel

Enclosure
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4)
5 Karoly Law Offices, P C)

MUR 5504

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8 **GENERAL COUNSEL'S BRIEF**

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10 **I. INTRODUCTION**

11 Complainant, a former employee, alleged that John Karoly, Jr , the President and
12 Treasurer of Karoly Law Offices, P C ("Karoly Law Offices") caused four other law firm
13 employees and their spouses to be reimbursed for \$13,000 in contributions to Gephardt for
14 President ("Gephardt Committee") with the law firm's corporate funds Mr Karoly, representing
15 the four law firm employees and spouses and himself, responded by submitting identical cursory
16 affidavits from himself and each alleged conduit, which state, in their entirety "My contribution
17 to the Richard Gephardt campaign was not based upon any reimbursement and I received no
18 reimbursement for same " Karoly Law Offices did not respond to the allegations

19 The Federal Election Commission ("Commission") found reason to believe that Karoly
20 Law Offices knowingly and willfully violated 2 U S C §§ 441b(a) and 441f in connection with a
21 conduit contribution scheme in which reimbursements to Karoly Law Offices' employees and
22 other individuals for their contributions to the Gephardt Committee came from the law firm's
23 corporate treasury After more than three months delay, Mr Karoly and Karoly Law Offices
24 retained counsel, the law firm previously having not been represented by counsel The counsel
25 representing Karoly and the law firm filed a response to the reason to believe findings and, in
26 response to a Commission subpoena, submitted documents from the law firm Their response
27 states that the Commission should dismiss the matter because the complainant is a disgruntled

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1 former employee who was terminated for cause, the complaint was filed a year after the events
2 occurred and after complainant's unemployment compensation claim was rejected, complainant
3 had no personal knowledge of a reimbursement by Karoly Law Offices, and the affidavits
4 submitted by the alleged conduits are sufficient because they respond to the complaint's
5 allegations

6 During the course of the investigation, one of the conduits recanted his prior affidavit and
7 admitted that Mr Karoly arranged for him to be reimbursed for his contribution In response to a
8 Commission subpoena, Karoly and three other law firm employee conduits asserted their Fifth
9 Amendment rights and declined to appear for depositions Our investigation shows that through
10 John Karoly, Karoly Law Offices used corporate law firm funds to reimburse \$13,000 in
11 contributions to the Gephardt Committee Based on the information discussed below, this Office
12 is prepared to recommend that the Commission find probable cause to believe that Karoly Law
13 Offices knowingly and willfully violated 2 U S C §§ 441b(a) and 441f

14 **II. SUMMARY OF THE RECORD**

15 According to the Pennsylvania Secretary of State's Office, Karoly Law Offices was
16 incorporated in Pennsylvania in 1986 and John Karoly, Jr is listed as President and Treasurer
17 John Karoly, Jr is a trial lawyer in Allentown, Pennsylvania He has been active in the local and
18 state Democratic Party in Pennsylvania and was a delegate to the 2000 and 2004 Democratic
19 National Conventions In 2004, he was a member of the Democratic National Committee Since
20 1998, he has contributed \$14,250 to federal candidates

The complaint alleged and our investigation confirmed that the following \$13,000 in contributions to the Gephardt Committee were reimbursed from Karoly Law Offices' funds, at Mr Karoly's direction

Named Contributor	Date of Contribution	Amount of Contribution	Date Reimbursement Deposited
Gregory Paglianite & Spouse	9/30/03	\$4,000 00	10/7/03 (cash)
Jayann Brantley & Spouse	9/30/03	\$4,000 00	10/7/03 (cash)
Christna Ligotti & Spouse	9/30/03	\$3,000 00	10/7/03 (check)
Heather Kovacs	9/30/03	\$2,000 00	10/27/03 (cash)

Gregory Paglianite, who was employed as a paralegal by Karoly Law Offices in 2003 but has since left that firm, disavowed the affidavit dated August 17, 2004 submitted in response to the complaint and has admitted in a more recent affidavit that he was solicited by Karoly to contribute to the Gephardt Committee, with the promise of reimbursement See Paglianite affidavit dated June 27, 2006 at p 1 Paglianite wrote a check for \$4,000 dated September 28, 2003 to the Gephardt Committee, the only federal contribution ever made by Paglianite or his spouse Subsequently, Karoly requested Jayann Brantley, who handled financial matters at the firm, to bring him cash *Id* After Brantley brought cash to Karoly, Karoly reimbursed Paglianite for his and his wife's contributions of \$4,000 to the Gephardt Committee Paglianite deposited the \$4,000 in cash into his personal bank account on October 7, 2003 *Id*

Jayann Brantley, a secretary at Karoly Law Offices, also wrote a check on September 28, 2003 for \$4,000 to the Gephardt Committee, representing contributions from herself and her

1 husband, Theodore Brantley, of \$2,000 each ¹ This is the only contribution that the Brantleys
2 have ever made to a federal candidate On October 7, 2003, the same day that Karoly Law
3 Offices cashed a check for \$12,000 and Paglianite deposited his \$4,000 cash reimbursement into
4 his bank account, the Brantleys also deposited \$4,000 in cash to their credit union account The
5 law firm's payroll records do not reflect this \$4,000 as regular pay, overtime pay or as a bonus to
6 Jayann Brantley There is also no evidence that these funds represent reimbursement of
7 administrative and office expenses The affidavit that Brantley submitted to the Commission was
8 identical to the affidavit that Paglianite submitted, which Paglianite later disavowed
9 Furthermore, Brantley asserted her Fifth Amendment privilege against self-incrimination and
10 declined to appear for a deposition pursuant to a Commission subpoena

11 On September 28, 2003, the same day that Paglianite and Brantley wrote checks to the
12 Gephardt Committee, Christina Ligotti, then a paralegal at Karoly Law Offices, wrote a check for
13 \$3,000 to the Gephardt Committee for contributions from herself and her husband, Matthew
14 Ligotti, of \$1,500 each This is the only contribution that the Ligottis have ever made to a federal
15 candidate ² According to representations by her new counsel, Karoly Law Offices gave Christina
16 Ligotti a check dated October 6, 2003 in the amount of \$3,000 with the "pay to the order of" line

¹ Brantley's net pay in 2003 from Karoly Law Offices was \$32,975, and at the time Brantley wrote the \$4,000 check, she had inadequate funds in her account to cover it

² In March 2007, Ms Ligotti's counsel stated that the Gephardt Committee informed her that her \$3,000 contribution in 2003 was excessive and that the Gephardt Committee unilaterally allocated \$1,500 of the total contribution in her name to her husband without notifying her at the time of the allocation In June 2007, Ms Ligotti received a refund check for \$1,500 from the Gephardt Committee Ms Ligotti's counsel stated that Mr Ligotti was not a contributor to the Gephardt Committee However, based upon the timing of this refund, it appears that Ms Ligotti made contact with the Gephardt Committee in 2007 regarding her contribution in response to this matter In September 2003, the contribution limit was \$2,000 for the primary election and the Gephardt Committee properly allocated this \$3,000 contribution to Christina Ligotti and Matthew Ligotti for \$1,500 each

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1 of the check left blank ³ The memo line of the check states "Hirko Bonus" ⁴ When Ms Ligotti
2 received this check, she had been employed with the firm less than four months, having been
3 hired in June 2003 Ms Ligotti's net pay in 2003 from Karoly Law Offices was \$32,433 The
4 law firm's payroll records do not reflect this \$3,000 check as regular pay, overtime pay, or as a
5 bonus to Christina Ligotti Since a bonus is considered income, this payment should be reflected
6 on the law firm's payroll records Ms Ligotti never received any other payment called a "bonus"
7 nor, from the evidence we obtained concerning the relevant time-period, did other Karoly Law
8 Offices employees

9 Based on the check's amount and timing, it appears that it represents reimbursement by
10 the Karoly Law Offices for the Ligottis' \$3,000 contribution On October 7, 2003, the same day
11 that Gregory Paglianite and Jayann Brantley each made \$4,000 cash deposits to their bank
12 accounts, the Ligottis deposited \$3,073 ⁶⁵ into their bank account, which included the \$3,000
13 check from Karoly Law Offices that Christina Ligotti had received the previous day Although
14 Ligotti submitted an affidavit denying that she was reimbursed, it was identical to the affidavit
15 Paglianite submitted, which he later disavowed Christina Ligotti has asserted her Fifth
16 Amendment privilege against self-incrimination and declined to appear for a subpoenaed
17 deposition

³ Ms Ligotti's counsel states that Ligotti's husband, Matthew Ligotti, took the check to the bank, filled his name on "the pay to the order of" line instead of writing "cash" on that line, and deposited the check into their joint checking account This check is inconsistent with other salary and overtime payments that Ms Ligotti received from Karoly Law Offices, which always included her name in the pay to the order line of the checks No reason has been given for the law firm's departure from its typical practice in filling out this \$3,000 check

⁴ The Hirko case was a major litigation matter in which Karoly Law Offices served as plaintiff's counsel Ms Ligotti's counsel states that this payment represented a bonus for her overtime on the Hirko case

On September 28, 2003, the same day as the Paglianite, Brantley and Ligotti contributions, Heather Kovacs, a secretary at Karoly Law Offices, wrote a check for \$2,000 to the Gephardt Committee for her contribution. Prior to this contribution, Kovacs had never made a contribution to a federal candidate.⁵ On October 27, 2003, Kovacs deposited \$3,021.56 into her bank account, which included her regular biweekly paycheck, a cash deposit of \$1,700 and another deposit of \$60.⁶ Based upon her financial records and the timing of this transaction, it appears that the \$1,700 cash deposit included in the October 27, 2003 bank transaction represents the bulk of a \$2,000 reimbursement that Kovacs received from Karoly Law Offices for her contribution. Her bank account records show a pattern of Kovacs frequently depositing checks representing her biweekly salary payment or overtime payments minus a small portion. During the period from March 2003 to February 2004, there is no other instance of Kovacs depositing an amount greater than the total of her salary and overtime payments.

In an affidavit dated August 17, 2004, Ms. Kovacs denied that she had been reimbursed for her contribution to the Gephardt Committee. This affidavit, submitted when she was still represented by Karoly, was the same one submitted by all of Karoly's then clients (except it was not notarized), which Paglianite later disavowed.⁷ Kovacs declined to appear for a deposition.

⁵ Kovacs' net pay in 2003 from Karoly Law Offices was \$50,765.

⁶ This \$3,021.56 deposit was the single, largest deposit Kovacs made to her bank account between March 2003 and February 2004.

⁷ Kovacs has never addressed a specific allegation in the complaint that in a June 25, 2004 that she admitted to having been reimbursed for her contribution. Ms. Kovacs' new counsel claimed that she had submitted a second affidavit denying that she admitted to complainant in a telephone conversation that she had been reimbursed. The Commission received this second affidavit dated March 17, 2005 but it was neither signed nor notarized, but only contained the signature symbol "/s/ ". We pointed out the deficiencies in Kovacs' second affidavit to her new counsel. However, we never received a signed, notarized copy.

1 and asserted her Fifth Amendment privilege against self-incrimination See letter from Kovacs'
2 counsel to the Commission dated June 7, 2007

3 The Commission issued Karoly a deposition subpoena A letter from his counsel states
4 that he declined to appear for the deposition because the Commission "seeks to depose
5 Mr Karoly not to evaluate this matter impartially, but rather to use his testimony to support an
6 adverse finding against him " See letter from Karoly's counsel to the Commission dated July 13,
7 2007 In a telephone conversation with the Commission's Office of General Counsel on July 23,
8 2007, counsel asserted that it was clear from his earlier letter that Karoly would be asserting his
9 Fifth Amendment privilege if he appeared at a deposition Counsel later stated in writing that
10 Karoly reserved his right to assert his Fifth Amendment privilege against self-incrimination if he
11 is compelled to testify See letter from Karoly's counsel to the Commission dated August 20,
12 2007

13 **III. ANALYSIS**

14 The evidence shows that Karoly Law Offices, an incorporated entity, through John
15 Karoly, Jr , reimbursed support personnel and their spouses with law firm funds for contributions
16 totaling \$13,000 Section 441b(a) prohibits corporations from making contributions or
17 expenditures from their general treasury funds in connection with any election, and Section 441f
18 prohibits contributions in the name of another Under well-settled principles of agency law,
19 actions by executive officers, like Mr Karoly, are imputed to the company See *Weeks v United*
20 *States*, 245 U S 618, 623 (1988) See also Restatement (Third) of Agency § 2 04 (2006)
21 Mr Karoly is President and Treasurer of Karoly Law Offices These titles bespeak an individual

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1 with significant authority within the corporation, both actual and apparent Because Mr Karoly
2 was acting within the scope of his authority as an officer of Karoly Law Offices when he
3 approved the reimbursement of contributions, Karoly Law Offices violated 2 U S C §§ 441b and
4 441f by making corporate contributions in the name of its employees

5 In this matter, the evidence that Karoly Law Offices reimbursed federal contributions
6 with corporate funds at the direction of John Karoly, Jr is sufficient to support a probable cause
7 finding This evidence includes Paglianite's disavowal of his initial affidavit and his admission
8 in a sworn affidavit that he and his spouse were reimbursed for federal contributions by Karoly
9 Law Offices at Karoly's behest The evidence also includes Paglianite and Brantley each
10 depositing \$4,000 in cash into their bank accounts on October 7, 2003, the same day that the law
11 firm cashed a \$12,000 check, Ligotti's husband depositing a \$3,000 check from Karoly Law
12 Offices into the Ligotti's bank account on October 7, 2003, Kovacs depositing the single, largest
13 deposit over a ten-month period into her bank account on October 27, 2003, consisting of her
14 regular pay check and \$1,700 in cash, the lack of any evidence from the law firm's payroll
15 records that the payments to Brantley, Ligotti and Kovacs constituted regular pay, overtime pay
16 or bonuses and the fact that Paglianite, Brantley, Ligotti and Kovacs or their spouses had never
17 made a contribution to a federal candidate before their contributions to the Gephardt Committee

18 The same principles of agency as discussed above provide the basis for finding that
19 Karoly Law Offices' violation through John Karoly, Jr , its President and Treasurer, were
20 knowing and willful The knowing and willful standard requires knowledge that one is violating
21 the law See *Federal Election Commission v John A Dramasi for Congress Committee*,

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640 F Supp 985, 987 (D N J 1986) A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false " *United States v Hopkins*, 916 F 2d 207, 214 (5th Cir 1990) An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions *Id* at 214-15

Karoly attempted to disguise the reimbursements to Paglianite, Brantley, Ligotti and Kovacs by making them in the form of cash or as a bonus check, which were not recorded in the law firm's payroll records⁸ While a section 441f violation, in which the true source of funds is withheld from the recipient committee, the FEC, and the public, is inherently self-concealing, by using support personnel at his law firm as conduits, Karoly chose people he could intimidate professionally and who provided the opportunity to hide payments Karoly also took other steps to disguise his actions, including submitting sworn affidavits on behalf of his clients, that Paglianite, at least, has disavowed Karoly's representation of Paglianite, Brantley, Ligotti and Kovacs was consistently characterized by delay and excuses, in all cases, subpoenaed documents were only provided once new counsel was retained These actions indicate that Karoly deliberately tried to cover his actions and suppress the truth When given the opportunity to give

⁸ Karoly is a sophisticated political actor who made several contributions within federal limits to federal candidates prior to and since the contributions in issue

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his own version of the events in question, he chose to remain silent ⁹

The Commission is entitled to draw an adverse inference against Karoly Law Offices from the refusals to testify at subpoenaed depositions. See *Chariot Plastics, Inc v United States*, 28 F Supp 2d 874, 877 n 1 (S D N Y 1998), *Brinks v City of New York*, 717 F 2d 700, 709 (2nd Cir 1983). The adverse inference rule provides that "when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." *International Union (UAW) v NLRB*, 459 F 2d 1329, 1336 (D C Cir 1972), see also, *Arvin-Edison Water Storage Dist v Hodel*, 610 F Supp 1206, 1218 n 41 (D D C 1985). The theory underlying this rule is that, all things being equal, "a party will of his own volition introduce the strongest evidence available to prove his case." *International Union (UAW)*, 459 F 2d at 1338. Conversely, if the party fails to introduce such evidence, it may be inferred that the evidence was withheld because it contravened the position of the party suppressing it. *Id*. Thus, when a party unreasonably resists a subpoena for relevant testimony or documents, it can be inferred that the refusal to comply with the subpoena indicates that the

⁹ Written representations by counsel for Brantley and Ligotti that their depositions did not represent reimbursement, the original affidavits, Kovacs' second affidavit that was neither personally signed nor notarized, and protestations by Karoly's and the law firm's counsel about the complainant or the complaint, should be regarded in the context of these respondents' decisions not to testify. They were aware that this Office had obtained information that contradicted, or at least called into serious question, those submissions, and therefore sought to depose them in order to elicit sworn testimony that was subject to cross-examination, follow-up, and clarification. Because they chose to invoke the Fifth Amendment or otherwise declined to appear, that opportunity was lost. For these types of reasons, federal courts have upheld a district court's power to strike or disregard testimony, live or in the form of an affidavit, from witnesses who assert the Fifth Amendment and refuse to answer the government's deposition testimony in order to shield their testimony from scrutiny. See, e.g. *U S v Parcels of Land*, 903 F 2d 36 (1st Cir 1990), *Lawson v Murray*, 837 F 2d 653, 656 (4th Cir), cert denied, 488 U S 831 (1988) ("To allow a witness to testify and then assert the Fifth Amendment to escape scrutiny would be "a positive invitation to mutilate the truth.") Although this Office is not suggesting following such precedent to strike any affidavits or written submissions in this matter, the Commission should give little or no weight to them.

evidence or testimony would be adverse to the party's position *See id* at 1338-39 There is no need for an administrative agency to seek enforcement of the subpoena in court before drawing an adverse inference from the resisting party's failure to comply with it *Id* at 1338-39

Moreover, that individual refusals to testify are premised on Fifth Amendment privileges against self-incrimination does not preclude drawing an adverse inference *Baxter v Palmigiano*, 425 U S 308, 318 (1976), *see also*, *SEC v International Loan Network, Inc*, 770 F Supp 678, 695-96 (D D C 1991), *aff'd*, 968 F 2d 1304 (D C Cir 1992) (court may draw adverse inference from party's refusal to testify based on Fifth Amendment), *Pagel, Inc v SEC*, 803 F 2d 942, 946-47 (8th Cir 1986) (agency did not err in taking into account adverse inference based on broker-dealer's invocation of Fifth Amendment privilege against self-incrimination), *Cerrone v Shalala*, 3 F Supp 2d 1174, 1175 n 3, 1180 (D Colo 1998) (agency's finding, based in part on adverse inference drawn against disability benefit recipient who invoked Fifth Amendment, was supported by substantial evidence)

Based on all the reasons stated, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe Karoly Law Offices, P C knowingly and willfully violated 2 U S C §§ 441b(a) and 441f

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IV. GENERAL COUNSEL'S RECOMMENDATION

- 1 Find probable cause to believe that Karoly Law Offices, P C knowingly and willfully violated 2 U S C §§ 441b(a) and 441f

Date 3/11/2008


Thomasenia P Duncan
General Counsel


Mark D Shonkwiler
Acting Deputy Associate General Counsel
for Enforcement


Susan L. Lebeaux
Assistant General Counsel


Delbert K Rigsby
Attorney

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